

**FILED**

MAY 27 2016

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DISCOVERY SALES, INC.,

Defendant.

CR- 16-00199 YGR

) UNITED STATES' SENTENCING  
) MEMORANDUM, MOTION TO WAIVE  
) PRESENTENCE REPORT, AND MOTION FOR  
) EXPEDITED SENTENCING

) Date: June 3, 2016  
) Time: 3:00 pm

) **FILED UNDER SEAL**

The United States of America files this sentencing memorandum pursuant to Criminal Local Rule 32-5(b) in support of its recommendation that the Court sentence defendant Discovery Sales, Inc. (DSI) to pay an agreed-upon fine of \$8 million and restitution to Fannie Mae and Freddie Mac in the combined amount of \$3 million. The United States also respectfully moves this Court, pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) and Criminal Local Rules 32-1(b) and 32-2, to waive the presentence report in this matter and sentence DSI on an expedited basis on June 3, 2016, after accepting DSI's guilty plea. DSI will separately file papers indicating that it waives its right to a presentence report and, as provided in the Plea Agreement, requests expedited sentencing.

This memorandum provides the factual background for the Court and outlines the material terms

SENTENCING MEMORANDUM  
CR 16-0199 YGR

Document No.  
**82**  
District Court  
Criminal Case Processing

of the Plea Agreement between the United States and DSI, in the event the Court waives the presentence report and grants the parties' request to impose a sentence on June 3, 2016. A copy of the DSI 11(c)(1)(C) Plea Agreement is attached as Exhibit A. Federal Rule of Criminal Procedure 32(c)(1)(A) permits the Court to sentence the corporate defendant in this matter without the preparation of a presentence report if the Court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553, and the Court explains its finding on the record. See also Criminal Local Rule 32-1(b). The United States submits that the information contained in this memorandum and the attached Plea Agreement, as well as the record in a number of related cases described below, are sufficient to enable the Court to exercise its sentencing authority under 18 U.S.C. § 3553 without the need of a presentence report. If the Court finds that it does not have sufficient information to allow for the imposition of sentence on the scheduled date of the plea hearing, the parties are prepared to submit additional information requested by the Court.

#### **I. BACKGROUND AND OFFENSE CONDUCT**

On July 18, 2013, the United States filed an Information charging DSI with bank fraud, in violation of 18 U.S.C. § 1344. DSI will waive indictment when arraigned on the Information at 9:30 am on June 3, 2016.

DSI was a company created by Albert Seeno III to sell new homes built by Discovery Builders, Inc. ("DBI"), Albert D. Seeno Construction Co., Inc. ("AD Seeno"), and other entities affiliated with Albert Seeno III and the Seeno family ("the builders"). The homes were built in developments throughout the East Bay Area, including in Contra Costa and Alameda Counties.

DSI is the sales arm of a group of affiliated construction companies that build new homes in the East Bay and I-80 corridor. When the housing market began to soften in 2006-2008, DSI took steps to avoid losing its position in the market – it had to keep selling houses at a certain price point. The steps taken by DSI included incentivizing new home buyers by paying their downpayments and subsidizing their mortgage payments. DSI, its employees, and others worked to ensure that these incentives were not disclosed in the mortgage loan applications or related documents submitted to mortgage lenders. If they had been disclosed, bank underwriters would not have approved the loans.

Over 325 Seeno and Discovery homes during the period 2006 – 2008 involved the use of



1 incentives. The total sales for those homes exceeded \$200 million.

2 The Information filed against DSI is the most recent case filed in connection with an investigation  
3 by the FBI into a scheme to sell homes built by affiliates of DSI to unqualified buyers at inflated prices.  
4 In connection with this investigation, the U.S. Attorney's Office has filed and resolved charges against  
5 nine individuals, three of whom are still pending sentencing:

6 • *United States v. Tony Phan, Miguel Arenas, George Zevada, and Chang Park*, Case No. 13-0556  
7 YGR. Phan was an underwriter for a mortgage lender called Homecomings Financial. Arenas was a tax  
8 preparer. Zevada and Chang worked for a Southern California mortgage broker. Together, they  
9 conspired to arrange for fraudulent loans for unqualified buyers, including buyers of homes for DSI. This  
10 Court sentenced Phan and Arenas to terms of probation and Zevada to six months in prison. Phan has not  
11 yet been sentenced.

12 • *United States v. Sharon Wang and Heather Yin*, Case No. CR 11-0686 JSW. Wang and Yin were  
13 real estate agents and loan brokers. They brought buyers to DSI who were unable to fund home purchases  
14 legitimately. They received large commissions, generally \$30,000, in exchange for introducing the  
15 buyers to DSI. These buyers filled out phony loan applications, which Wang directed to a co-conspirator  
16 who was employed by Bank of America. Wang and Yin were sentenced by the Honorable Jeffrey S.  
17 White to sentences of probation.

18 • *United States v. Jason Sterlino*, Case No. CR 13-0231 JSW. Sterlino was a sales manager for  
19 DSI. He received a kickback from Wang and Yin from the commissions they received from DSI. He  
20 knew that the buyers Wang and Yin were bringing to him were not qualified for the loans they were  
21 receiving. Sterlino also knew that the loan applications being submitted to the mortgage lenders did not  
22 disclose the various incentives DSI provided to the buyers. Sterlino had been instructed to ensure that the  
23 incentives remain hidden from the lenders. Sterlino was sentenced by Judge White to six months in  
24 prison.

25 • *United States v. Carey Hendrickson*, Case No. CR 12-0292 YGR. Hendrickson was a manager at  
26 DSI who reported to Ayman Shahid. Hendrickson was involved in administering the incentive programs  
27 that form the basis for the charges against DSI. Hendrickson also personally participated in one of the  
28 fraud scheme utilized by DSI to move homes at inflated sales prices. Hendrickson bought,

1 simultaneously, three homes from DSI. Without putting down any of her own money, Hendrickson  
2 purchased three DSI homes using loans obtained from three different mortgage lenders. Neither she nor  
3 DSI disclosed to the lenders that she was purchasing three homes simultaneously. Two of the homes  
4 went into foreclosure.

5 • *United States v. Ayman Shahid*. Case No. CR 14-0271 YGR. Shahid's conduct forms the  
6 primary basis for the charge against DSI. Shahid was the vice president of DSI, reporting to Albert Seeno  
7 III, during the 2006-2008 time period.

8 The following information was obtained through the FBI investigation, and the United States  
9 would be prepared to prove it were the case against DSI to go to trial. From 2006 to 2008, DSI inflated  
10 the sale price of new homes by offering significant cash and other incentives to new home buyers. The  
11 primary purpose of the price inflation was to support a large line of credit the builders maintained, which  
12 was collateralized by the new homes and the property on which the homes would be built. If the home  
13 and property values dropped, the value of the collateral would drop and the line of credit would be  
14 reduced or terminated, or additional collateral would be required to secure the line of credit.  
15 Accordingly, it was necessary to maintain inflated home sales prices, and participated in schemes and  
16 devices to accomplish this goal. This is what is commonly known as a "builder bailout" scheme.

17 During 2006-2008, buyers with little or no money of their own were purchasing homes at prices  
18 that were inflated through the use of incentives. As Shahid explained in his plea agreement:

19 The buyers were not required to possess or post any of their own money when buying a  
20 home; DSI, the builders, and their affiliates would provide money to buyers to make  
21 down payments. The loans were secured by homes that were in some cases worth less  
22 than the loan amount; DSI did not make an effort to determine the true value of these  
23 homes. As the financial crises worsened, the problem was exacerbated by the falling  
24 market.

25 It was part of the scheme to ensure that evidence of the incentives did not appear in the bank loan  
26 files. If the incentives appeared in the bank loan files, the loan underwriters would likely reject the  
27 loans, primarily because the loan-to-value ratio would not support the requested loan on the inflated  
28 sales price of the home. For this reason, DSI employees took steps to ensure that the details of the  
incentives that were being given to specific buyers did not appear in the bank loan files, including not  
informing appraisers of the incentives that were being given to buyers.



1 One of the incentive programs used by DSI and the builders was a down payment assistance  
2 program. The builders created an entity called the Collateral Financing Group ("CFG") to make what  
3 were characterized as loans to home buyers for the purpose of funding their down payments. I knew  
4 that these loans were either expressly forgivable or forgivable in fact because neither CFG nor the  
5 builders made substantial efforts to obtain loan repayment from the buyers. No effort was made to  
6 determine whether the buyers were capable of repaying CFG loans. Although managers of the preferred  
7 lenders were aware of the incentive programs, it was part of the scheme that the amount of CFG loans  
8 made to particular buyers and the fact that they were forgivable and/or forgiven in fact was not disclosed  
9 by DSI to the mortgage lenders.

10 The banks that were originating the loans would sell the mortgages in a secondary market shortly  
11 after origination. It was, therefore, important to ensure that buyers would keep current on mortgage  
12 payments. DSI, and its employees and affiliates, created various devices, including the Existing  
13 Mortgage Assistance Program (EMAP), to make cash payments to buyers for a short period of time so  
14 that they would not default. EMAP was treated, instead, as a way of providing undisclosed cash  
15 incentives to home buyers.

16 In the plea agreement, DSI agrees that it is guilty of bank fraud based a *respondeat superior*  
17 theory of liability derived from their guilty pleas. DSI agrees that Shahid, as vice president of DSI, and  
18 Carey Hendrickson and Jason Sterlino, all of whom were employed by DSI during the relevant time  
19 period, committed bank fraud and engaged in a conspiracy to commit bank fraud by fraudulently  
20 causing bank underwriters to approve mortgage loans for unqualified buyers. Corporate liability may be  
21 predicated on *respondeat superior* liability. See, e.g., *United States v. Hughes Aircraft*, 20 F.3d 974 (9<sup>th</sup>  
22 Cir. 1994).

23 DSI also agrees, as a matter of factual proof, that from 2006 to 2008, certain buyers with little or  
24 no funds of their own were induced to purchase homes at prices that were increased through the use of  
25 financial incentives that were not disclosed to the mortgage lenders. DSI acknowledges that these  
26 buyers were not required to possess or post any of their own funds when buying a home; DSI arranged  
27 through its affiliates for money to be provided to these buyers to make down payments and cover  
28

1 existing mortgage payments. DSI agrees that the mortgage lenders and secondary purchasers of  
2 mortgage loans affected by the fraud schemes were federally insured financial institutions.

## 3 4 **II. MATERIAL TERMS OF THE DSI PLEA AGREEMENT**

5 The material terms of the plea agreement, attached hereto as Exhibit A, between DSI and the  
6 U.S. Attorney's Office include:

7 1. DSI will waive indictment, waive all rights as enumerated in the plea agreement, and  
8 plead guilty to a one-count Information charging it with bank fraud, in violation of 18 U.S.C. § 1344.  
9 DSI will agree that there is a factual basis for the plea, as set forth in Paragraph 2 of the Plea Agreement.  
10 The United States would be able to prove at trial those facts, as well as the facts set forth in the plea  
11 agreements for former DSI employees Ayman Shahid, Carey Hendrickson, and Jason Sterlino.

12 2. DSI and the United States agree that the appropriate sentence in this case is a fine of \$8  
13 million, a special assessment of \$400, and a 5 year term of probation. The fine will be paid in five  
14 installments and secured by a litigation bond. The first installment of \$1,333,333 shall be paid on the  
15 one year anniversary of sentencing in this matter, with three subsequent \$1,333,333 installments on each  
16 yearly anniversary thereafter until the final payment. Interest will accrue beginning on the date of entry  
17 of judgment and the fifth and final installment will be \$2,666,668, plus any remaining interest due and  
18 owing.

19 3. DSI will pay restitution in the amount of \$3,000,000 within 120 days of sentencing. The  
20 basis for this restitution payment is explained below.

21 4. The United States agrees not to file additional charges related to its investigation into  
22 undisclosed incentives and related practices against DSI, its affiliates, or employees of DSI or its  
23 affiliates, except the three former employees already charged, as set forth in paragraph 18 of the Plea  
24 Agreement.

## 25 **III. SENTENCING GUIDELINES CALCULATIONS**

26 The offense level calculation for DSI is the same calculation used in the plea agreement of  
27 Ayman Shahid, the former DSI officer on whose guilty plea DSI's *respondeat superior* liability is in  
28 part based. The total loss using the Ninth Circuit-approved formula is \$75 million, which measures the



1 difference between the loan amount and, essentially, the amount the home sold for after default. This  
2 loss amount was calculated by Navigant, an independent consultant retained by the United States, and  
3 reviewed and agreed to by counsel for both Shahid and DSI. The parties and Navigant followed the  
4 formula approved by the Ninth Circuit in *United States v. Morris*, 744 F.3d 1373 (9<sup>th</sup> Cir. 2014).<sup>1</sup> A \$75  
5 million loss results in a 24 level increase in the offense level under U.S.S.G. § 2B1.1.

6 The final offense level includes a downward departure because the parties agree that the \$75  
7 million number is overstated as to DSI and Shahid. This conclusion is based primarily on the  
8 contributory culpability of the mortgage lenders who funded the loans at issue. The parties agree that  
9 the preferred mortgage lenders, Wells Fargo and J.P. Morgan Chase, were on some notice that DSI was  
10 engaged in various shenanigans to inflate the value of their homes. Employees of the preferred lenders  
11 were embedded with DSI employees, and DSI continued selling homes and maintained prices, even as  
12 the market was crumbling around it. The banks periodically told DSI to be sure disclose all incentives,  
13 yet did little to ensure that DSI was doing so – which it was not. Something was amiss, yet the preferred  
14 lenders continued to pump out loans on DSI properties and generate fees and payments on those loans  
15 before selling the loans on the secondary market.

16 To that point, the evidence does not prove that the originating lenders lost \$75 million. This is a  
17 result of the practice, prevalent at the time, of securitizing poorly performing mortgages. After  
18 originating loans, the mortgage lenders very quickly dumped most of them into the secondary securities  
19 market. For the most part, the mortgage lenders who originated the loans on DSI homes made money in  
20 the origination then got rid of the loans by selling them in the secondary markets. As the Court can see  
21 from this trajectory of the investigation that led to this case, everyone was making money gaming the  
22

23  
24 <sup>1</sup> “We adopt the two-step approach first articulated by the Eastern District of Virginia, and subsequently  
25 adopted by the Second, Sixth, and Tenth Circuits. In calculating loss in mortgage fraud cases, these  
26 Circuits hold that the first step is to calculate the greater of actual or intended loss, where actual loss is  
27 the reasonably foreseeable pecuniary harm from the fraud. This amount will almost always be the entire  
28 value of the principal of the loan, as it is reasonably foreseeable to an unqualified borrower that the  
entire amount of a fraudulently obtained loan may be lost. The second step is to apply the “credits  
against loss” provision and deduct from the initial measure of loss any amount recovered or recoverable  
by the creditor from the sale of the collateral. This second calculation is made without any consideration  
of reasonable foreseeability.” *United States v. Morris*, 744 F.3d 1373, 1375 (9<sup>th</sup> Cir. 2014)

system, or at least trying to do so: the builders, the buyers, the real estate agents, the mortgage brokers, and the originating banks, and the banks who securitized the bad loans. This is why tagging one participant, the builder, with a loss number using the normal formula which assumes a completely innocent bank victim<sup>2</sup> is not fair or just and the United States accordingly recommends a downward departure of four levels, a departure to which both DSI and Shahid have agreed.

The parties agree that the offense level should be calculated as follows, resulting in a base fine of \$8.5 million:

Offense Level (U.S.S.G. §§ 8C2.3 and 2B1.1)

Base Offense Level, U.S.S.G. § 2B1.1:	7
Specific Offense Characteristic, U.S.S.G. § 2B1.1:	24
Downward Departure, U.S.S.G. § 2B1.1, cmt. 20(c):	-4
Total Offense Level:	27
Base Fine	\$8.5 million

In the case of a corporate plea, the ultimate fine is determined by calculating the culpability score under U.S.S.G. § 8C2.5, applying the fine multiplier under U.S.S.G. § 8C2.6, and then the fine range under U.S.S.G. § 8C2.4. The parties agree that the fine range, here, is \$6.8 to \$13.6 million.

Culpability Score (U.S.S.G. § 8C2.5)

Base Score, U.S.S.G. § 8C2.5(a):	5
Involvement or Tolerance, U.S.S.G. § 8C2.5(b)(5):	1
Acceptance, U.S.S.G. § 8C2.5(g)(3):	-2
Total Culpability Score:	4
<u>Fine Multiplier</u> , U.S.S.G. § 8C2.6:	.8-1.6
<u>Fine Range</u> , U.S.S.G. § 8C2.4(d):	\$6.8 to \$13.6 million

The \$8 million fine to which the parties agree is within the fine range prescribed by the

<sup>2</sup> To be clear, the scheme involved DSI causing false statements to be made to the originating banks. These false statements made the loans look clean, which allowed the originating banks to sell the loans in the secondary markets. The incentives were occasionally disclosed accidentally in the loan documents or to appraisers, which required the originating banks either to reject them or, if too late, keep them in their own portfolios.



1 Sentencing Guidelines.

2 **IV. BOND POSTED BY DSI**

3 The parties have agreed on the filing of a litigation bond, under which the fine will be paid if DSI  
4 defaults on any payment. The bond should be lodged with the Clerk of Court and, if defendant defaults  
5 on any payment, judgment should be issued on the bond in favor of the United States.

6 **V. RESTITUTION**

7 Because of the practice of selling loans in the secondary markets and as part of large securities  
8 created by investment banks, it was not possible to identify the individual companies or individuals who  
9 lost money as a result of the scheme, with the exception of the government-sponsored lending  
10 institutions, Fannie Mae and Freddie Mac. These two institutions lost a total of approximately \$3  
11 million from DSI homes originally sold during 2006-2008, and that is the restitution the United States  
12 seeks through the plea agreement.

13 During the time period of the Information, DSI worked with two “preferred lenders,” Wells  
14 Fargo and J.P. Morgan Chase. Certain employees and managers of these two preferred lenders knew  
15 about the incentive programs offered by DSI and the builders, and knew that the incentives were not  
16 being disclosed in the loan files. Bank executives informed DSI that they required details regarding  
17 incentives to be included in the loan files, but in truth the preferred lenders performed little or no  
18 diligence to see that the incentives they knew were being provided were disclosed in the loan files.

19 The originating lenders who made loans to purchase DSI properties, including Wells Fargo and  
20 J.P. Morgan Chase, generally would not keep the mortgages and thus did not end up losing money as a  
21 result of the DSI fraud scheme. Instead, they would sell the mortgages to other banks who would  
22 package them in securities that were sold to other investors. These securities failed when the underlying  
23 mortgages went into default. It was impossible to trace the majority of the mortgage loans on the over  
24 300 homes sold by DSI that were the subject of the FBI investigation; it would have been harder yet to  
25 identify individual victims of the fraud given that the mortgages were securitized and traded.

26 The United States was able to trace a number of the mortgage loans on homes sold by DSI to  
27 Fannie Mae and Freddie Mac. The Federal Housing Finance Agency, Office of Inspector General, was  
28 able to identify 20 specific home mortgages that were acquired by Fannie Mae and Freddie Mac and

1 then went into default. Both Fannie Mae and Freddie Mac obtained these mortgage loans after they had  
2 been originated by other banks. The spreadsheet attached hereto as Exhibit B shows the financial  
3 impact on Fannie Mae and Freddie Mac of foreclosures related to homes sold by DSI during the period  
4 of the fraudulent incentive scheme.<sup>3</sup> The parties agreed that various minor differences over the  
5 calculation of the loss to Fannie Mae and Freddie Mac were best resolved by a compromise at a \$3  
6 million restitution figure.

7 The largest victim of defendant's conduct was the United States economy, which suffered in  
8 2007 and 2008 in diverse ways as a result of the conduct of defendant and the many other culpable  
9 participants in the mortgage crisis. Because of the practice of securitization and the culpability of the  
10 lenders themselves, it was not possible to identify all of the losses caused by defendant's conduct.  
11 Under U.S.S.G. § 8B1.1(b)(2), restitution need not be ordered to the extent that "the number of  
12 identifiable victims is so large as to make restitution impracticable," or "determining complex issues of  
13 fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing  
14 process to a degree that the need to provide restitution to any victim is outweighed by the burden on the  
15 sentencing process."

16 However, with this plea agreement, the two taxpayer-sponsored financial services companies  
17 that lost money as a direct result, Fannie Mae and Freddie Mac, will be made whole by the defendant  
18 through the \$3 million restitution payment. This obligation was calculated by the independent inspector  
19 general for the Federal Housing Finance Agency and it is one that the parties agree is appropriate.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27  
28 <sup>3</sup> One of the loans, 2209 Truman, ultimately sold for more than the loan amount and, therefore,  
the total loss amount was reduced by \$416,000.





## Exhibit A



BRIAN J. STRETCH (CABN 163973)  
United States Attorney

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,	) NO.
	)
Plaintiff,	) PLEA AGREEMENT
	)
v.	)
	)
DISCOVERY SALES, INC.,	)
	)
Defendant.	)

Defendant, DISCOVERY SALES, INC. ("DISCOVERY SALES"), and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. DISCOVERY SALES agrees that, as a corporate defendant, it is liable for the actions of its employees and agents performed in the course and scope of their employment or agency. Accordingly, DISCOVERY SALES agrees to plead guilty to Count One of the captioned Information charging it with bank fraud in violation of 18 U.S.C. § 1344. DISCOVERY SALES agrees that the elements of the offense are as follows: (1) the defendant knowingly executed a scheme to defraud a

1 financial institution as to a material matter; (2) the defendant did so with the intent to defraud the  
 2 financial institution; and (3) the financial institution was insured by the Federal Deposit Insurance  
 3 Corporation. DISCOVERY SALES agrees that the maximum penalties for a violation of 18 U.S.C.  
 4 § 1344 are as follows:

- |   |    |                              |  |
|---|----|------------------------------|--|
| 5 | a. | Maximum fine                 | \$1,000,000 or twice the gross gain or loss, |
| 6 |    |                              | whichever is greater (18 U.S.C. § 3571(c),   |
|   |    |                              | (d))   |
| 7 | b. | Maximum probation term       | 5 years (18 U.S.C. § 3561)                   |
| 8 | c. | Mandatory Special Assessment | \$400 (18 U.S.C. § 3013)                     |
| 9 | d. | Restitution                  |  |

10  
 11 2. DISCOVERY SALES agrees that it is guilty of the offense to which it is pleading guilty,  
 12 and agrees that the following facts are true: DISCOVERY SALES agrees that during the years 2006  
 13 through 2008 its then-employee and officer, Ayman Shahid, committed the crime of bank fraud, with  
 14 which he was charged and has pleaded guilty. DISCOVERY SALES further agrees that Shahid, as vice  
 15 president of DISCOVERY SALES, and Carey Hendrickson and Jason Sterlino, all of whom were  
 16 employed by DISCOVERY SALES during the relevant time period, committed bank fraud and engaged  
 17 in a conspiracy to commit bank fraud by fraudulently causing bank underwriters to approve mortgage  
 18 loans for unqualified buyers. From 2006 to 2008, certain buyers with little or no funds of their own  
 19 were induced to purchase homes at prices that were increased through the use of financial incentives.  
 20 These buyers were not required to possess or post any of their own funds when buying a home;  
 21 DISCOVERY SALES arranged for money to be provided to these buyers to make down payments.

22 DISCOVERY SALES further agrees that during the 2006 through 2008 time period the sales  
 23 prices of certain homes were increased by offering financial incentives to new home buyers.  
 24 DISCOVERY SALES arranged loans that were secured by the buyers' existing homes that were in some  
 25 cases worth less than the loan amount, and DISCOVERY SALES did not make an adequate effort to  
 26 determine the true value of these homes. Certain former employees of DISCOVERY SALES, including  
 27 Shahid, committed bank fraud by taking steps to ensure information that would reduce the value of the  
 28 homes was kept out of bank loan files. Specifically, the details of the incentives that were being given



1 to specific buyers were knowingly withheld from the bank loan approval documents because the true  
2 loan-to-value ratio would not support the requested loan on the increased sales price of the home. If the  
3 incentives had appeared in the bank loan files, the loan underwriters would likely have rejected the  
4 loans.

5 DISCOVERY SALES agrees that numerous mortgage lenders and secondary purchasers of  
6 mortgage loans affected by the bank fraud schemes described herein were federally insured financial  
7 institutions.

8 3. DISCOVERY SALES agrees that by entering this guilty plea it hereby waives all  
9 objections to the form of the charging documents, and admits that it is in fact guilty of the offense to  
10 which it is pleading guilty as set forth in the Information.

11 4. DISCOVERY SALES agrees to appear at the plea and sentencing hearings through a  
12 duly authorized corporate representative.

13 5. DISCOVERY SALES knowingly and voluntarily waives the following rights through its  
14 guilty plea: (a) the right to plead not guilty; (b) the right to a speedy and public trial before a jury;  
15 (c) the right to effective assistance of counsel at trial; (d) the right to be presumed innocent until guilt  
16 has been established at trial beyond a reasonable doubt; (e) the right to confront and cross-examine  
17 government witnesses at trial; (f) the right to compel or subpoena witnesses to appear on DISCOVERY  
18 SALES's behalf at trial; (g) the right to move to suppress evidence or raise any other Fourth or Fifth  
19 Amendment claims; (h) the right to any further discovery from the government and to pursue any  
20 affirmative defenses and present evidence; (i) the right to appeal a finding of guilt, any orders of the  
21 Court, and any aspect of its sentence, including restitution; and (j) the right to bring any collateral attack  
22 against DISCOVERY SALES's conviction or sentence, including a petition under 28 U.S.C. § 2255 or  
23 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, except as it may relate to effectiveness of legal  
24 representation.

25 6. DISCOVERY SALES agrees not to ask the Court to withdraw its guilty plea at any time  
26 after it is entered unless the Court declines to accept the sentence agreed to by the parties.

27 DISCOVERY SALES and the government mutually agree that either party may withdraw from this  
28 Agreement if the Court does not accept the agreed upon sentence set out below. DISCOVERY SALES

1 further agrees that the criminal statute of limitations shall be tolled from the date it signed the  
 2 Agreement until it has made all payments required under this agreement. DISCOVERY SALES  
 3 understands that by entering into this Agreement: (a) it agrees that the facts set forth in Paragraph 2 of  
 4 this Agreement shall be admissible against it under Fed. R. Evid. 801(d)(2)(A) in any subsequent  
 5 proceeding, including at trial, in the event it violates any of the terms of this Agreement, and (b) it  
 6 expressly waives any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the  
 7 facts set forth in Paragraph 2 of this Agreement in any such subsequent proceeding. DISCOVERY  
 8 SALES understands that the government will not preserve any physical evidence obtained in this case.

9 7. DISCOVERY SALES agrees that the Court will use the Sentencing Guidelines to  
 10 calculate its sentence. DISCOVERY SALES understands that the Court must consult the Guidelines,  
 11 including Chapter Eight, and take them into account when sentencing, together with the factors set forth  
 12 in 18 U.S.C. § 3553(a). DISCOVERY SALES agrees that the following Sentencing Guideline  
 13 calculations apply:

14 a. Offense Level (U.S.S.G. §§ 8C2.3 and 2B1.1)

15 Base Offense Level, U.S.S.G. § 2B1.1(a)(1): 7

16 Specific Offense Characteristic, U.S.S.G. § 2B1.1(b)(1)(M): 24

17 Downward Departure, U.S.S.G. § 2B1.1, cmt. 20(C): -4

18 Total Offense Level: 27

19 Base Fine, U.S.S.G. § 8C2.4: \$8.5 million

20 b. Culpability Score (U.S.S.G. § 8C2.5)

21 Base Score, U.S.S.G. § 8C2.5(a): 5

22 Involvement or Tolerance, U.S.S.G. § 8C2.5(b)(5): 1

23 Acceptance, U.S.S.G. § 8C2.5(g)(2): -2

24 Total Culpability Score: 4

25 c. Fine Multiplier, U.S.S.G. § 8C2.6: .8-1.6

26 d. Fine Range, U.S.S.G. § 8C2.4(d): \$6.8 to \$13.6 million

27 8. DISCOVERY SALES agrees that a reasonable and appropriate disposition of this case  
 28 under the Sentencing Guidelines and 18 U.S.C. § 3553(a), and the sentence to which the parties have



1 agreed is, as follows:

2           a.     Criminal Fine: DISCOVERY SALES shall pay a criminal fine of \$8,000,000,  
3 which fine amount takes into account, among other things, the government's investigation cost in this  
4 matter. The first installment of \$1,333,333 shall be paid on the one year anniversary of sentencing in  
5 this matter, with three subsequent \$1,333,333 installments on each yearly anniversary thereafter until the  
6 final payment. Interest will accrue beginning on the date of entry of judgment and the fifth and final  
7 installment will be \$2,666,668, plus any remaining interest due and owing. DISCOVERY SALES may  
8 pre-pay all or part of the total fine.

9           b.     Probation: DISCOVERY SALES will be placed on probation for a term of 5  
10 years for the purpose of court supervision of payment of the fine and restitution, starting the day  
11 DISCOVERY SALES is sentenced by the Court. As a term of its probation, DISCOVERY SALES  
12 shall commit no further violations of federal, state, or local law, and shall conduct all its operations in  
13 accordance with the laws of the United States.

14           c.     Mandatory Special Assessment: Pursuant to 18 U.S.C. § 3013, DISCOVERY  
15 SALES will pay a \$400 mandatory special assessment at the time of sentencing.

16           d.     Restitution: DISCOVERY SALES will pay restitution in the amount of  
17 \$3,000,000 within 120 days of sentencing. The restitution amount shall be paid to the Clerk, United  
18 States District Court for the Northern District of California, which will process and disburse the  
19 payments to the victims.

20           9.     DISCOVERY SALES agrees that the fine and restitution imposed by the Court against it  
21 will be due and payable as set forth herein. If DISCOVERY SALES fails to make any payment as  
22 prescribed by this Agreement, the entire amount of the fine and restitution (\$11 million) shall become  
23 immediately due and payable and subject to immediate collection by the government, and DISCOVERY  
24 SALES understands that the government may seek immediate collection of the entire fine and restitution  
25 from any assets of DISCOVERY SALES. DISCOVERY SALES agrees that it will make a good-faith  
26 effort to pay the fine and restitution it is ordered to pay. DISCOVERY SALES agrees to pay the special  
27 assessment at the time of sentencing.

28           10.    DISCOVERY SALES shall provide a bond to secure payment of the outstanding amount

1 of the fine set forth in Paragraph 8(a) above, payable to the Clerk, United States District Court for the  
2 Northern District of California. Such bond will be lodged with the Clerk of Court along with this  
3 Agreement at the time of the plea.

4 11. DISCOVERY SALES agrees that regardless of any other provision of this Agreement,  
5 the government may and will provide the Court with all information relevant to the charged offenses and  
6 the sentencing decision. The United States and DISCOVERY SALES jointly submit that this Plea  
7 Agreement, together with the record that will be created by the United States and DISCOVERY SALES  
8 at the plea and sentencing hearing, and the existing record of related cases before the Court, will provide  
9 sufficient information concerning the defendant, the crime charged in this case, and the defendant's role  
10 in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C.  
11 § 3553. The United States and DISCOVERY SALES agree to request jointly that the Court accept the  
12 defendant's guilty plea and impose sentence on an expedited schedule as early as the date of the  
13 arraignment, based upon the record provided by the defendant and the United States, under the  
14 provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Crim. L.R. 32-1(b). The Court's  
15 denial of this joint request and referral to the Probation Department for a Presentence Report will not  
16 void this Plea Agreement.

17 12. DISCOVERY SALES agrees not to commit or attempt to commit any crimes before  
18 sentence is imposed; to provide truthful information to the Court, the Probation Office, and the  
19 government; and to comply with all of the other promises it has made in this Agreement. DISCOVERY  
20 SALES agrees that if it fails to comply with any promises it has made in this Agreement, then the  
21 government will be released from all of its promises in this Agreement, including those set forth in the  
22 Government's Promises Section below, but DISCOVERY SALES will not be released from its guilty  
23 plea.

24 13. If DISCOVERY SALES changes its name, the renamed company shall be obliged to  
25 meet all of the obligations of DISCOVERY SALES under this Agreement. If DISCOVERY SALES  
26 merges with or is purchased by another company, the merger partner or purchaser shall be obliged to  
27 meet all of the obligations of DISCOVERY SALES under this Agreement.

28 14. DISCOVERY SALES agrees that this Agreement contains all of the promises and



1 agreements between it and the government, and supersedes any other agreements, written or oral. No  
 2 modification of this Agreement shall be effective unless it is in writing and signed by all parties.

3 15. DISCOVERY SALES agrees that the Agreement binds the U.S. Attorney's Office for the  
 4 Northern District of California only, and does not bind any other federal, state, or local agency.

5 The Government's Promises

6 16. The government agrees not to file any additional charges against DISCOVERY SALES  
 7 as a result of the investigation that led to the captioned Information.

8 17. The government agrees that the reasonable and appropriate sentence in this case is as set  
 9 forth above, as secured by the bond to be filed pursuant to paragraph 10, unless the defendant violates  
 10 any term of this Agreement or fails to accept responsibility.

11 18. The government agrees that it will not bring criminal charges related to the investigation  
 12 into undisclosed incentives and practices used by DISCOVERY SALES, among other things, that led to  
 13 the charge alleged in the captioned Information against any affiliated or related entity of defendant or  
 14 any current or former owner, member, shareholder, director, officer, or employee of the defendant or its  
 15 related or affiliated entities, except that the protections granted in this paragraph shall not apply to  
 16 Ayman Shahid, Carey Hendrickson, and Jason Sterlino, and do not extend to employees of joint  
 17 ventures between DISCOVERY SALES and preferred lenders during the time frame alleged in the  
 18 Information. The government will not be bound to the terms of this paragraph if defendant fails to make  
 19 any payment required under paragraph 8 of this Agreement, either directly or through the surety.

20 DISCOVERY SALES's Affirmations

21 19. DISCOVERY SALES represents that this Agreement shall bind DISCOVERY SALES,  
 22 its successor corporation if any, and any other person or entity that assumes the obligations contained  
 23 herein ("successors-in-interest"). DISCOVERY SALES, or its successors-in-interest, if applicable,  
 24 shall provide the government with immediate notice of any name change, change in corporate or  
 25 individual control, change in ownership, merger, change of legal status, sale or purchase of assets,  
 26 divestiture of assets, or similar action affecting their ability to pay the fine or otherwise comply with this  
 27 Agreement. No change in name, change in corporate or individual control, change in ownership,  
 28 merger, change of legal status, sale or purchase of assets, divestiture of assets, or similar action shall

1 alter DISCOVERY SALES's obligations under this Agreement. DISCOVERY SALES shall not engage  
2 in any action to seek to avoid the obligations set forth in this Agreement.

3 20. DISCOVERY SALES represents that it is authorized to enter into this Agreement. On or  
4 before the date of entry and filing of the Agreement, DISCOVERY SALES shall provide to the  
5 government and the Court a notarized written statement, certifying that DISCOVERY SALES is  
6 authorized to enter into and comply with all of the provisions of this Agreement. The resolutions further  
7 shall authorize a corporate representative to enter into this Agreement, and that all corporate formalities  
8 for such authorizations have been observed.

9 21. DISCOVERY SALES confirms that it has had adequate time to discuss this case, the  
10 evidence, and the Agreement with its attorney and that its attorney has provided it with all the legal  
11 advice that DISCOVERY SALES requested.

12 22. DISCOVERY SALES confirms that its decision to enter a guilty plea is made knowing  
13 the charges that have been brought against it, any possible defenses, and the benefits and possible  
14 detriments of proceeding to trial. DISCOVERY SALES also confirms that its decision to plead guilty is  
15 made voluntarily, and no one coerced or threatened it to enter into this Agreement.

16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM GOODMAN for  
DISCOVERY SALES, INC.

18  
19 BRIAN J. STRETCH  
20 United States Attorney

21 Dated: \_\_\_\_\_

\_\_\_\_\_  
JOHN H. HEMANN  
Assistant United States Attorney

22  
23  
24 ///

25 ///

26 ///

27 ///

28 ///



1           23. I have fully explained to my client all the rights that a criminal defendant has and all the  
2 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all  
3 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my  
4 client's decision to plead guilty is knowing and voluntary.

5  
6 Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM GOODMAN  
WILLIAM KEANE  
Attorneys for Defendant

## Exhibit B



## Fraud Loss

Loan#	Street Address	City	Servicer Name	Origination Date	Acquire d	Loan Status	Sold Date	UPB	Delinquen t	Disburse ment	Sales Proceeds	MI Proceeds	Other Proceeds	Receipt Total	Loss Amount
1706404194	1024 PARKSIDE DR	VACAVILLE	BANK OF AMERICA, N.A.	02/16/08	FNMA	Preforeclosure Sale	09/10/12	\$ 417,000	\$ 40,158	\$ 33,304	\$ 302,992	\$ -	\$ 181,080	\$ 484,062	\$ 6,400
1707552072	1032 AZEVEDO RANCH RD	VALLEJO	BANK OF AMERICA, N.A.	06/17/08	FNMA	REO Disposed		\$ 371,410	\$ 19,453	\$ 18,848	\$ 244,606	\$ 48,435	\$ 340	\$ 293,381	\$ 116,330
1707250022	2209 TRUMAN LN	OAKLEY	JP MORGAN CHASE BANK, NA	05/17/08	FNMA	REO Non Disposed		\$ 455,637	\$ 13,739	\$ 17,054	\$ -	\$ 54,633	\$ 16,370	\$ 71,002	\$ 416,427
1706406511	2307 TAMALPAIS AVE	BRENTWOOD	JP MORGAN CHASE BANK, NA	03/17/08	FNMA	Preforeclosure Sale		\$ 417,000	\$ 32,620	\$ 23,524	\$ 235,059	\$ -	\$ -	\$ 236,059	\$ 237,085
1705405800	2917 RIO VERDE	PITTSBURG	WELLS FARGO BANK, N.A.	10/17/07	FNMA	REO Disposed	04/20/09	\$ 417,000	\$ 10,856	\$ 25,017	\$ 384,940	\$ -	\$ 2,500	\$ 387,530	\$ 65,343
1706414217	300 TILDEN CIR	VACAVILLE	BANK OF AMERICA, N.A.	01/16/08	FNMA	Preforeclosure Sale		\$ 416,491	\$ 24,056	\$ 19,265	\$ 322,209	\$ -	\$ -	\$ 282,209	\$ 137,604
1705789500	432 TILDEN CIR	VACAVILLE	JP MORGAN CHASE BANK, NA	11/17/07	FNMA	REO Disposed	04/29/11	\$ 395,354	\$ 16,322	\$ 13,671	\$ 204,546	\$ -	\$ 2,583	\$ 207,129	\$ 223,219
1706546994	6088 OLD QUARRY LOOP	OAKLAND	BANK OF AMERICA, N.A.	04/17/08	FNMA	REO Disposed	02/25/11	\$ 416,811	\$ 46,968	\$ 35,250	\$ 200,238	\$ -	\$ 1,168	\$ 201,407	\$ 297,663
1706707247	6088 OLD QUARRY LOOP	OAKLAND	BANK OF AMERICA, N.A.	02/16/08	FNMA	Other Liquidated - Disposed		\$ 417,000	\$ 40,940	\$ 31,202	\$ 251,200	\$ -	\$ -	\$ 251,200	\$ 237,942
1706705141	6429 BLUE ROCK CT	OAKLAND	BANK OF AMERICA, N.A.	03/17/08	FNMA	Preforeclosure Sale		\$ 417,000	\$ 44,098	\$ 25,375	\$ 299,822	\$ -	\$ 30	\$ 299,852	\$ 186,621
1706819560	604 SILVER STAR CT	VACAVILLE	BANK OF AMERICA, N.A.	04/17/08	FNMA	Preforeclosure Sale		\$ 361,523	\$ 15,258	\$ 4,339	\$ 257,019	\$ -	\$ 540	\$ 257,560	\$ 123,560
1706889750	725 GREENTREE CIR	FAIRFIELD	GMAC MORTGAGE, LLC	09/27/07	FNMA	Preforeclosure Sale		\$ 371,483	\$ 16,018	\$ 8,176	\$ 220,305	\$ -	\$ -	\$ 220,305	\$ 175,372
473716773	2403 TAMALPAIS AVE	BRENTWOOD	JP MORGAN CHASE BANK	12/12/07	FHLMC	REO Sale Closed	12/08/09	\$ 417,000	\$ 10,222	\$ 41,289	\$ 302,798	\$ -	\$ 1,530	\$ 304,329	\$ 164,183
494973343	25 WEDGEWOOD CT	PITTSBURG	JP MORGAN CHASE BANK	07/31/09	FHLMC	REO Sale Closed		\$ 417,000	\$ 6,605	\$ 34,947	\$ 251,523	\$ -	\$ 5,105	\$ 256,628	\$ 201,925
502044659	6144 OLD QUARRY LOOP	OAKLAND	BANK OF AMERICA	02/27/08	FHLMC	REO Sale Closed	09/05/09	\$ 417,000	\$ 6,733	\$ 43,163	\$ 277,753	\$ -	\$ -	\$ 277,753	\$ 189,144
511833000	3510 OLD QUARRY CREEK DR	ANTIOCH	JP MORGAN CHASE BANK	05/05/08	FHLMC	Third party sale	06/01/10	\$ 417,000	\$ 16,385	\$ 2,937	\$ 191,542	\$ -	\$ -	\$ 191,296	\$ 245,026
511789204	6423 BLUE ROCK CT	OAKLAND	BANK OF AMERICA	04/15/08	FHLMC	REO Sale Closed	02/18/11	\$ 413,620	\$ 9,556	\$ 84,269	\$ 393,239	\$ -	\$ 706	\$ 393,945	\$ 143,530
511800735	3024 DANBURY WAY	FAIRFIELD	BANK OF AMERICA	04/10/08	FHLMC	Third party sale	07/16/10	\$ 416,953	\$ 11,758	\$ 7,440	\$ 274,450	\$ -	\$ -	\$ 274,450	\$ 181,693
521435648	3016 DANBURY WAY	FAIRFIELD	BANK OF AMERICA	05/27/08	FHLMC	Short Sale	11/12/10	\$ 417,000	\$ 32,473	\$ 26,976	\$ 394,585	\$ -	\$ -	\$ 394,585	\$ 81,854
	1809 EL DORADO AVE	BRENTWOOD	BANK OF AMERICA		FHLMC	REO Sale Closed	07/19/11	\$ 373,500	\$ 9,977	\$ 5,757	\$ 403,533	\$ -	\$ -	\$ 403,533	\$ (14,299)
Total Losses to FNMA and FHLMC															\$3,456,622

## Exhibit C



## UNITED STATES DISTRICT COURT

Northern

District of

California

UNITED STATES OF AMERICA

V.

DISCOVERY SALES, INC.

**JUDGMENT IN A CRIMINAL CASE**

(For Organizational Defendants)

CASE NUMBER: CR 16-0199 YGR

William Goodman &amp; William Keane

Defendant Organization's Attorney

**THE DEFENDANT ORGANIZATION:**

- ☒ pleaded guilty to count(s) one
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. 1344	Bank Fraud		One

The defendant organization is sentenced as provided in pages 2 through 6 of this judgment.

- ☐ The defendant organization has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's  
Federal Employer I.D. No.: 90-0000393

6/3/2016  
Date of Imposition of Judgment

Defendant Organization's Principal Business Address:

4061 Port Chicago Highway  
Concord, California 95420

\_\_\_\_\_  
Signature of Judge

Yvonne Gonzalez-Rogers U.S. District Judge  
Name of Judge Title of Judge

6/3/2016  
Date

Defendant Organization's Mailing Address:

4061 Port Chicago Highway  
Concord, California 95420

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR



DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

### PROBATION

The defendant organization is hereby sentenced to probation for a term of :  
5 years

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

Defendant shall pay the \$3 million restitution ordered by the Court within 180 days of sentencing.

Defendant shall pay the \$8 million fine imposed by the Court on the following schedule: The first installment of \$1,333,333 shall be paid on the one year anniversary of sentencing in this matter, with three subsequent \$1,333,333 installments on each yearly anniversary thereafter until the final payment. Interest will accrue beginning on the date of entry of judgment and the fifth and final installment will be \$2,666,668, plus any remaining interest due and owing.

Defendant shall lodge with the Clerk of Court on the day of sentencing a surety bond in the amount of \$8 million payable to the Clerk of Court, Northern District of California. If defendant fails to make any fine payment on the schedule set forth above, the total amount of the bond shall be forfeit to the United States.

### STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants  
Sheet 2A — Probation

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Judgment—Page \_\_\_\_\_ of 6

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

**ADDITIONAL PROBATION TERMS**



AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants  
Sheet 2B — Probation

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Judgment—Page \_\_\_\_\_ of 6

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

### **SPECIAL CONDITIONS OF SUPERVISION**

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants  
Sheet 2C — Probation

Judgment—Page \_\_\_\_\_ of 6

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

**ADDITIONAL STANDARD CONDITIONS OF SUPERVISION**



DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.

CASE NUMBER: CR 16-0199 YGR

**CRIMINAL MONETARY PENALTIES**

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 400.00	\$ 8,000,000.00	\$ 3,000,000.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
FHLMC		\$1,175,000.00	
FNMA		\$1,825,000.00	
<b>TOTALS</b>	\$ 0.00	\$ 3,000,000.00	

☒ Restitution amount ordered pursuant to plea agreement \$ 3,000,000.00

☒ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants  
Sheet 3A — Criminal Monetary Penalties

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DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

Judgment — Page \_\_\_\_\_ of 6

**ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**



Judgment — Page                      of                      6

\* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

### SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C or ☐ D below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or
- C ☐ Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Special instructions regarding the payment of criminal monetary penalties:

The \$3,000,000 restitution payment shall be made within 180 days of the date of sentencing.

The first installment of \$1,333,333 shall be paid on the one year anniversary of sentencing, with three subsequent \$1,333,333 installments on each yearly anniversary thereafter until the final payment. Interest will accrue beginning on the date of entry of judgment and the fifth and final installment will be \$2,666,668, plus any remaining interest due and owing. Defendant may prepay all or part of the total prior to dates on which installments are due.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant organization shall pay the cost of prosecution.
- ☐ The defendant organization shall pay the following court cost(s):
- ☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR**ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL**

<u>Case Number Defendant and Co-Defendant Names (including defendant number)</u>	<u>Total Amount</u>	<u>Joint and Several Amount</u>	<u>Corresponding Payee, if appropriate</u>
--	---------------------	-------------------------------------	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

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--	--	--	--

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants  
Sheet 4B — Schedule of Payments

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DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

Judgment — Page \_\_\_\_\_ of 6

**ADDITIONAL FORFEITED PROPERTY**

DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

### STATEMENT OF REASONS

☐ The court adopts the presentence report and guideline applications **WITHOUT CHANGE**.

**OR**

☐ The court adopts the presentence report guideline applications **BUT WITH THESE CHANGES**:

#### Guideline Range Determined by the Court:

☐ The defendant organization is a criminal purpose organization pursuant to U.S.S.G. §8C1.1.

**OR**

☐ The calculation of the guideline fine range is unnecessary because the defendant organization cannot pay restitution pursuant to U.S.S.G. §8C2.2(a).

**OR**

Total Offense Level: 27  
Base Fine: \$8,500,000.00  
Total Culpability Score: 4  
Fine Range: \$ 6,800,000.00 to \$ 13,600,000.00

☐ Disgorgement amount of \$ \_\_\_\_\_ is added to fine pursuant to U.S.S.G. §8C2.9.

☐ Fine offset amount of \$ \_\_\_\_\_ is subtracted from fine pursuant to U.S.S.G. §8C3.4.

☐ Fine waived or below the guideline range because of inability to pay pursuant to U.S.S.G. §8C.3.3.

#### RESTITUTION DETERMINATIONS

Total Amount of Restitution: \$ 3,000,000.00

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

☐ For offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

☐ Restitution is not ordered for other reasons:

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c) for the following reason(s):



DEFENDANT ORGANIZATION: DISCOVERY SALES, INC.  
CASE NUMBER: CR 16-0199 YGR

### STATEMENT OF REASONS

☒ The sentence is within the guideline range and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence departs from the guideline range:
- ☐ upon motion of the government, as a result of a defendant's substantial assistance, or
  - ☐ for the following specific reason(s):

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**ADDITIONAL FINDINGS AND GUIDELINE APPLICATION CHANGES**

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**ADDITIONAL REASONS FOR DEPARTURE FROM THE GUIDELINE RANGE**